



Federal Communications Commission  
Washington, D.C. 20554

APR 5 1996

Herbert D. Miller, Jr., Esq.  
Koteen & Naftalin  
1150 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Gerard A. Turro  
687 Orchard Street  
Oradell, New Jersey 07649

Wesley Weis  
Monticello Mountaintop Broadcasting, Inc.  
11 Old Tappan Road  
Old Tappan, New Jersey 07675

Dear Messrs. Miller, Turro, and Weis:

The Commission, pursuant to delegated authority, has before it the results of an investigation into Gerard A. Turro ("Turro"), licensee of FM Broadcast Translator Stations W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York, and Monticello Mountaintop Broadcasting, Inc. ("MMBI"), licensee of Station WJUX(FM), Monticello, New York. Wesley R. Weis ("Weis") is the sole principal of MMBI. On February 15, 1995, the Commission received a written complaint on behalf of Universal Broadcasting of New York, Inc. ("Universal"), licensee of Station WVNJ(AM), Oakland, New Jersey. Universal alleged that Turro and Weis were engaged in prohibited activities involving the operation of their respective stations. On June 21, 1995, the Commission directed letters of inquiry to Turro and MMBI concerning Universal's allegations. Thereafter, on July 28, 1995, Turro and MMBI submitted their respective responses. Additionally, staff from the Commission's Compliance and Information Bureau conducted field inspections of the referenced stations.

It appears from the information before us that Turro, d/b/a Bergen County Community Broadcast Foundation, and Weis, d/b/a MMBI, are parties to a Network Affiliation Agreement pursuant to which WJUX(FM) broadcasts, on a full time (24-hour) basis, programming provided by Turro in consideration for certain financial remuneration paid by Turro to MMBI. It also appears that Turro and MMBI are parties to two rebroadcast agreements pursuant to which Turro rebroadcasts WJUX(FM)'s off-air programming over his Fort Lee and Pomona translator stations. The coverage contour of each of Turro's translator stations is located beyond the protected (1 mV/m) contour of WJUX(FM).

Section 74.1232(d) of the Commission's Rules states, in pertinent part, that an authorization for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station "will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees

general and limited partners, family members and business associates." See also Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990), aff'd and clarified, 8 FCC Rcd 5093 (1993). Since § 74.1232(d) of the Commission's Rules prohibits Turro from having "any interest whatsoever, or any connection with" WJUX(FM) beyond rebroadcasting WJUX(FM)'s off-air programming over his translator stations, and Turro is a party to a Network Affiliation Agreement which establishes for him a further significant business relationship with WJUX(FM), it is apparent that Turro is in violation of § 74.1232(d) of the Commission's Rules.

It is acknowledged that this office, by letter dated November 19, 1991, expressed a more permissive interpretation of the prevailing law on the subject of business relationships between translator and primary station licensees. That opinion letter, in response to a request by Turro for a declaratory ruling,<sup>1</sup> however, contemplated that Turro would have no more than a *de minimis* interest in or nominal connection with a then-unbuilt primary station. The November 19, 1991, letter did not anticipate -- and the Commission has never condoned -- a situation where, as here, Turro would have an ongoing and substantial business relationship with WJUX(FM) involving the provision of programming to the primary station on a full-time basis. Thus, to the extent that the November 19, 1991, opinion letter may have been construed as having conferred authority upon Turro to engage in this extensive business relationship with WJUX(FM), that authority is hereby rescinded. This result is consistent with the interpretation of § 74.1232(d) affirmed by the Commission subsequent to the November 19, 1991, opinion letter. See Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 8 FCC Rcd 5093 (1993).<sup>2</sup>

Accordingly, you are hereby given notice that so long as Turro continues to rebroadcast WJUX(FM)'s off-air programming over either one or both of his FM translator stations, Turro must cease from having any interest in or other connection with WJUX(FM). This prohibition shall include, but is not limited to, the Network Affiliation Agreement and the provision of programming by Turro to WJUX(FM) or the purchase or acquisition of time by Turro on


---

<sup>1</sup> Turro sought guidance from the Commission in January 1991 on the propriety of a proposal whereby a translator station licensee would purchase air time on the primary station that it is rebroadcasting, and: (a) the translator station would operate outside the primary contour of the station being broadcast; (b) the primary station would not reimburse the translator licensee for the air time that is purchased or provide any financial support to the translator station licensee; (c) the translator station licensee would purchase the air time through a time brokerage agreement containing terms that satisfy the Commission's rules and policies; and (d) the translator station would solicit commercial advertisements to be aired during the brokered time to support the programming presented. The November 19, 1991, letter determined that this proposal would not be prohibited by the Commission's rules or policies.

<sup>2</sup> It is noted that Turro has *twice* been denied requests for a waiver of the Commission's rules to allow him to originate programming over his translator stations. See Order, 2 FCC Rcd 6674 (1987), aff'd sub nom. Gerard A. Turro v. FCC, 859 F.2d 1498 (D.C. Cir. 1988); Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990), at ¶ 47-48.

WJUX(FM). In the alternative, so long as Turro continues to maintain any interest in or connection of any kind whatsoever with WJUX(FM), Turro shall cease from also rebroadcasting WJUX(FM)'s off-air programming over either one or both of his translator stations. You are hereby afforded 60 calendar days from the date of this letter within which to sever and/or discontinue any and all prohibited interests, connections, contracts, relationships, agreements, and activities, and to take whatever further action is necessary in order to comply fully with all of the provisions of § 74.1232 of the Commission's Rules. You are also hereby requested to notify the undersigned in writing by the expiration of the 60 day grace period of the steps that you have taken in response to this letter and to certify therein that you comply fully with all of the provisions of § 74.1232 of the Commission's Rules. Your failure to comply fully with all of the provisions of § 74.1232 after the expiration of the aforementioned 60 day grace period may result in the imposition of administrative sanctions, pursuant to § 312 of the Communications Act of 1934, as amended.

Sincerely,

  
Roy J. Stewart, Chief  
Mass Media Bureau

cc: Richard A. Helmick, Esq.

**DISMISSED OR DENIED APPLICATIONS**

The dismissed or denied applications of in which the proposed assignor had an interest are listed below. No FCC license in which the proposed assignor has had an interest has been revoked

APPLICATION	ACTION	COMMENTS
Oakland, NJ translator BPFT-940613TE		Dismissal requested October 11, 1994
Randolph, NJ BPFT- 880205TA	Dismissed September 8, 1989	Dismissal on engineering grounds
Hoboken, NJ BPFT-880323	Dismissed October 11, 1989	Dismissal on engineering grounds
Edgewater, NJ BPFT- 880324TG	Dismissed September 8, 1989	Dismissal on engineering grounds